IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 172 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R U SHAH

Versus

FIRM-KISHORENI MITHAI

Appearance:

1. Criminal Appeal No. 172 of 1990

MR NIRAV CHOKSHI for MR KI SHAH for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

MR RN SHAH for Respondents No. 1-2

MS HANSABEN PUNANI ld. APP for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 31/01/2002

ORAL JUDGEMENT

This acquittal appeal has been filed by the Food Inspector, Surat Municipal Corporation, Surat under section 378(4) of the Cr.P.C.

Heard learned counsel appearing for the appellant Mr. Nirav Chokshi for Mr. KI Shah. Learned counsel has taken me through the entire judgment and the relevant documents produced during the course of trial before the ld. J.M.F.C. (Muni.), Surat in PFA Case No. 12 of 1985. Ld. Magistrate has recorded the finding of acquittal vide judgment dated 10.3.1989.

According to the prosecution, the complainant Food Inspector has drawn the sample of "Khand Na Dana" popularly known as "Sakaria" and the same was sent for analysis to the Public Analyst at Vadodara. The report of the Public Analyst dated 21.1.1985 being against the accused, they are been prosecuted by the complainant. The opinion of the public analyst says that the sample no. 226 "Khand Na Dana" does not confirms the standard and provisions of "Cane Sugar" laid down under Prevention of Food Adulteration Rules, 1955 and it is adulterated, as per section. 2(ia)(a) as signed this it is not of cane Sugar.

Ld. Magistrate, at the conclusion of trial, has acquitted the accused considering three major important aspects. Firstly, it is held by the learned Magistrate that as the sample was not sent to the Public Analyst as provided by Rule 17 of the PFA Rules, 1955, and the accused can be acquitted. the contentions raised by the accused against noncompliance of Rule 17 has been accepted by the learned Magistrate. Secondly, the learned Magistrate has observed that the prosecution has failed to explain satisfactorily as to why the sample for analysis was not sent to the public analyst having its laboratory notified for the area i.e. at Surat. It is observed that the Public Health Authority can send the sample to any Laboratory but if the sample is sent to the Laboratory situated and notified for other area, then the cause or reason for taking such decision should be placed before the court. The Ld. Magistrate has also tried to explain as to how this is relevant and important from the defence point of view. Thirdly, it is also held that there is no standard prescribed in the relevant rules qua "Khand Na Dana" known as "Sakaria" and the sample therefore could not have been said to be substandard and therefore adultered within the meaning of sec. 2(ia)(a) of PFA Act.

Without going into the merits or say argument qua first two points, the finding of acquittal recorded by the ld. Magistrate requires to be upheld only on the (third point) ground that the standard of the Food Article from which the sample was drawn has not bee fixed under the Act especially under the Rules framed thereunder. It was not the case or the charge before the trial court that any inedible or prohibited colour was found in the sample but it is only opined that the sample was not to the standard provided for "cane sugar", it is opined that the same is adulterated as per sec. 2(ia)(a) only. The scheme and the standard reflected in

Appendix-B of various food articles and materials, if looked into, than Article-A.07 covers category of sweetening agents. There are various sub-categories under this entry such as Plantation white sugar, Misri, Refined sugar, Bura sugar, Gur or Jaggery etc. The word used by the complainant while drawing the panchanama, and while taking and forwarding the sample seems to have misled the public analyst. In vernacular Gujarati, the complainant has written and described the sample as "Khand Na Dana", therefore, only public analyst has took the standard of "Cane Sugar". Undisputedly, the sample drawn was not from cane sugar or refined sugar which is normally white and crystallised sugar obtained generating by refining of plantation white sugar. It was not also plantation white sugar which is commonly known as Sugar. In the grammar of language gujarati word (pratyay) used as "Na" would take one to more than one meanings. A thing which is prepared mainly from sugar syrup or Cane sugar and if that preparation is like small crystal or cube or granule then also it can be said to be "Khand Na Dana". The sample taken was not of cane sugar or crystal of sugar cane juice, but it was a sugar preparation it was some thing plus Cane sugar from which the standard in law and rules framed thereunder is not fixed or prescribed otherwise in Cane sugar colour is not used. Ld. Magistrate has taken utmost care in analyzing the oral evidence of the complainant and at one place during the course of cross-examination, the complainant himself has admitted that the sample was taken by him was of "sakaria" and for that no standard under the Act is prescribed. Ld. Magistrate could have acquitted the accused only on this point without discussing or analyzing other legal or factual disputes brought before him during the course of oral evidence or at the time of arguments. For short, the findings of the ld. Magistrate is totally in accordance with law and as per the facts and evidence led by the prosecution. There is no apparent error in appreciation of evidence nor any legal error has been committed.

It is settled proposition of law that when the court is dealing with an acquittal appeal, then the jurisdiction of this Court is limited. Reversal of acuittal is neither warranted nor proper only some arguable case is brought by the aggrieved appellant or there is some scope to record other contrary finding. There is no perversity in finding or say the basic illegality in appreciating the evidence and, therefore, finding recorded by the ld. Magistrate shall have to be upheld.

It is true that this Court can even re-write the judgment on same set of facts and evidence available on record on different point and can reach to a similar findi!ng if the ultimate finding of the acquittal is correct, but here is a case where ultimate finding recorded by the ld. Magistrate is concurrent to the evidence led and in accordance with law, therefore, I need not assign independent or separate reasons for confirming the acquittal recorded by the ld. Magistrate. It is sufficient to say that on the reasons and counts assigned by the ld. Magistrate the acquittal is confirmed here by this court. In other words, it can be said that by adopting very reasons assigned by the ld. Magistrate, acquittal is hereby confirmed.

During the course of oral submissions, Mr. Nirav Chokshi learned counsel has drawn the attention of this Court on a decision reported in AIR 1973 SCC p. 484 where the Apex Court had confirmed the order of conviction recorded by the High Court on some assumptions where the sample of "shakkar" was drawn. The Apex Court while recording the finding had considered the entry in Appendix-B at sr. no. A.07.05 which is for gur or jaggery. In the case on hand, "Sakaria" or "Khand Na Dana" were never sent for analysis as Jaggery or Gur even otherwise the Public Analyst could have said that the material received for analysis is sub-standard even otherwise on merits to the normal standard fixed for any particular sugar preparation within the meaning of the Act, therefore, the cited decision of the Apex court would not help the prosecution. According to me, considering the case put forward by the prosecution before the trial court, the judgment relied is not relevant.

In the result, this acquittal appeal is dismissed.

(C.K. BUCH, J.)

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